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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,504	05/18/2005	Ira Sanders	SAND3.0-003PCT/US	9381
47375	7590	12/03/2008	EXAMINER	
OMRI M. BEHR 325 PIERSON AVENUE EDISON, NJ 08837-3123			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	
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			12/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,504	Applicant(s) SANDERS, IRA	
	Examiner Rodney P. Swartz, Ph.D.	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19August2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-16 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Applicant's Response to Non-Compliant Amendment Notice, received 19 August 2008, is acknowledged. Claims 1, 3, 4, 5, 12, 14 and 15 have been amended. Claims 21-24 have been canceled.
2. Applicant's Supplemental Response, received 2 June 2008, containing the Declaration under 37 CFR 132 of Dr. Ira Sanders, is acknowledged.
3. Claims 1-20 are pending and under consideration.

Specification

4. The proposed amendment of the specification is objected to for improper amendment of: 1) page 4, line 29, (replacement of "01 02 agonists" with "Alpha-1 beta-2 agonists" on clean copy, but "Alpha-1 alpha-2 agonists" on marked up copy), and 2) page 6, line 1 (insertion of - an underline immediately prior to histamine) and line 14, (insertion of an underline immediately prior to 1984), as evidenced in the "clean copy" submitted by applicant.

In addition, the submission of the "marked up" copy contains underlines (indicating insertion) of material which already existed in the last entered copy of 5/18/05. Only those changes which are to be entered, based upon the last officially entered version, are to be so indicated.

However, in order to expedite the application, the examiner recommends that all amendments, properly designated, be submitted with the next response.

Also, the examiner has considered the claims, as currently amended.

Rejections Withdrawn or Moot

5. The rejection of claims 21-23 under 35 U.S.C. 101, is moot in light of the cancelation of the claims.

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6. The rejection of claims 21-23 under 35 U.S.C. 112, second paragraph, as being indefinite for "use", is moot in light of the cancelation of the claims.
7. The rejection of claims 21-24 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived", is moot in light of the cancelation of the claims.
8. The rejection of claims 1-3 and 5-20 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived", is withdrawn in light of the amendment of the claims.
9. The rejection of claims 3-5 under 35 U.S.C. 112, second paragraph, as being indefinite for improper Markush listing, is withdrawn in light of the amendment of the claims.
10. The rejection of claims 12 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite for "same", is withdrawn in light of the amendment of the claims.
11. The rejection of claim 22 under 35 U.S.C. 112, second paragraph, as being indefinite for "ands", is moot in light of the cancelation of the claim.
12. The rejection of claim 15 under 35 U.S.C. 112, second paragraph, as being indefinite for "ands", is withdrawn in light of the amendment of the claim.
13. The rejection of claims 21-24 under 35 U.S.C. 102(b) as being anticipated by Shaari et al (*Otolaryngol. Head Neck Surg.*, 112:566-571, 1995) is moot in light of the cancelation of the claims.

Rejections Maintained

14. The objection to claim 17 is maintained.
15. The rejection of claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived", is maintained.

Applicant argues that the amendment of the claim obviates the rejection.

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The examiner has considered applicant's argument, but does not find it persuasive because the claim originally recited "derived" twice. However, the amendment only corrected one of the recitations. The claim remains indefinite for the second recitation, i.e., "derived" from serotypes.

Conclusion

16. Claim 17 remains objected to. Claim 4 is finally rejected. Claims 1-3, 5-16 and 18-20 appear to be free of the prior art.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

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The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

November 10, 2008